



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

JAN 29 2007

1200 New Jersey Avenue, SE
Washington, D.C. 20590

Mr. Dennis Ashworth
Director
Office of Transportation
Office of Environmental Management
U.S. Department of Energy
Washington, DC 20585

Ref. No. 07-0008

Dear Mr. Ashworth:

This responds to your January 9, 2007 letter and, in further reference to our February 28, 2003 response, regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to security force personnel contracted by the Department of Energy (DOE) for the protection of Federal assets under DOE control. Your letter suggests two transportation scenarios: (1) transportation of weapons in ready-to-fire mode on public highways in accordance with an approved DOE contingency plan and to assist, if requested, local, state and federal law enforcement agencies; and (2) transportation of unloaded weapons and explosives in bulk on public highways to be used for training purposes at an offsite location. Your questions are summarized and answered as follows:

Q1. What are the applicable requirements, if any, when our contracted officers are carrying their loaded firearms while on duty, which includes security patrols in a vehicle on private property and public property, including highways?

A1. It is our understanding that Section 161.k of the Atomic Energy Act of 1954, as amended, authorizes DOE employees, contractors and subcontractors (at any tier) to carry firearms and to make arrests without warrants while in the discharge of their official duties. The HMR apply to the commercial transportation of hazardous materials (see § 171.1). Transportation of a weapon by a duly authorized security officer is not commercial transportation when the officer is performing authorized duties. Thus, transportation of a loaded firearm by a security officer in a DOE or personal vehicle during routine patrols of plant facilities, including patrols on public roads around the facility, is not subject to HMR requirements.

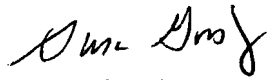
Q2. What are the applicable requirements, if any, when our contracted employees transport these unloaded firearms and explosives in bulk to a range for qualification, which includes traveling in a vehicle on private property and public property, including highways?

A2. When transported as cargo by motor vehicle over public roads, such as delivery from a DOE facility to a range for qualification, the bulk explosives are subject to all requirements

of the HMR applicable to such transportation. We note that the DOE Explosives Safety Manual (DOE M 440.1-1A, dated 01-09-06) provided with your letter reflects that policy for DOE security contractor forces.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Gorsky", written in a cursive style.

Susan Gorsky
Regulations Officer
Office of Hazardous Materials Standards



Department of Energy
Washington, DC 20585

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§ 171.1
§ 173.7
Applicability
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07-0008

JAN 09 2007

Mr. Edward T. Mazzullo, PHH-10
Director, Office of Hazardous Materials Standards
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
Attention: DHM-10
400 7th Street SW,
Washington, D.C. 20590-0001

Dear Mr. Mazzullo:

The purpose of this letter is to request an interpretation of the applicability of Subchapter C- *Department of Transportation (DOT) Hazardous Materials Regulations (HMR)* to off site hazardous material (HAZMAT) transportation activities performed under the Department of Energy (DOE) approved contingency plan, by the security forces contracted by DOE for the protection of its facilities and laboratories within the United States of America.

Background

On February 28, 2003, in response to the request from our Richland Operations Office (*see attachment 1*) with regard to the applicability of HMR (49 CFR Parts 171-180) to the security related offsite HAZMAT transportation activities of the security forces contracted by DOE, you opined that the transport of weapons and munitions by the contract security personnel must comply with HMR. You stated in your letter that contractor security force personnel would be subject to the HMR while transporting weapons and munitions while in the performance of their duties and in a ready response mode when required to travel on a "public highway."

Current Situation

The DOE contracted security personnel are responsible for the protection of DOE sites, facilities and other installations in accordance with sites' Safeguards and Security programs, DOE directives, and federal, state, and local government regulations. The DOE approach to the management of the safeguards and security program is described in the policy, DOE P 470.1, *Integrated Safeguards and Security Management Policy* and two manuals DOE M 470.4-1, *Safeguards and Security Program Planning and Management* dated 08-26-2005 and DOE M 470.4-3, *Protective Force*, dated 08-26-2005.



DOE sites have cooperative agreements with local, state and federal law enforcement agencies (LEAs) to assist with site law enforcement functions. In applicable LEA routine and/or response support during contingency may require site security personnel to respond using public roads within or outside the site area while transporting weapons and munitions in the government owned patrol vehicles.

Need for Clear Interpretation of HMR Applicability

The *DOE Explosives Safety Manual* (DOE M 440.1-1A, dated 01-09-06) requires that all DOE activities be conducted in a manner that protects the safety of the public and provides a safe and healthful workplace for employees. The DOE considers bulk transportation of munitions by security contractor forces, e.g. cases of grenades to a range for training purposes, to be "in commerce" and subject to the HMR (placarding, packaging, etc). However, the DOE maintains that transport of weapons and munitions by contractor security force personnel, in accordance with the 10 CFR 851 rule and Section 161K of the *Atomic Energy Act of 1954* as amended, as prescribed in an approved contingency plan, should not be subject to the HMR.

In our opinion, placarding a patrol vehicle when used in support of LEA and/ or in accordance with approved contingency plan, to indicate the types of explosives in the vehicle is considered to be security vulnerability. Packaging in accordance with HMR requirements would be extremely difficult and would adversely affect the response posture, e.g. the tactical vest with a munitions load. In performance of security duties under the approved contingency plans, security patrols are often required to travel on "public highways" that abut or cross DOE installations.

We request that you revisit this issue and we provide you the following additional information for your consideration:

1. 10 CFR 851, Department of Energy Worker Safety and Health Program, states that "contractors must comply with the policy and requirements specified in the DOE Explosives Safety Manual 440.1-1A, Contractor Requirements Document (*See attachment 2*), January 9, 2006."
2. The DOE Explosives Safety Manual, Section 16.0, Transportation, 16.1, Equipment and Operations, subsection d, states that "Section 161K of the *Atomic Energy Act of 1954*, as amended and Title 18 USC, Chapter 40, Section 845 governs security and emergency vehicles carrying explosives in support of approved contingency plans."
3. 10 CFR 851, Firearms Safety, states that "contractors must ensure that the transportation, handling, placarding, and storage of munitions conform to the applicable DOE requirements." The requirements are delineated in the DOE Explosives Safety Manual.

The carrying of weapons and munitions while on a security patrol, in a ready response mode in accordance with an approved contingency plan, is analogous to a federal or municipal law enforcement agency effort. Although DOE security contract personnel are not normally deputized by a local law enforcement agency, they do have powers of detention, arrest and use of deadly force as prescribed in Section 161K of the *Atomic Energy Act of 1954* as amended.

We therefore ask that you reconsider your previous interpretation. If you need additional information, please contact me at (202) 586-8548, or Mr. Ashok Kapoor at (202) 586-8307, (e-mail: ashok.kapoor@hq.doe.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Ashworth".

Dennis Ashworth
Director
Office of Transportation
Office of Environmental Management

Enclosures

Attachment 1: Correspondence between DOE and DOT in 2002-2003

Attachment 2: Excerpts from DOE Explosive Safety Manual

cc: Dae Chung, EM-63
Ashok Kapoor, EM-63
Allan Herrbach, NNSA/SC
Dennis Claussen, DOE/RL
M. Daugherty, EM 3.1